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5 UNITED STATES DISTRICT COURT
6 WESTERN DISTRICT OF WASHINGTON
7 AT TACOMA

8 THOMAS RUSSELL BOARDMAN,

CASE NO. C24-5777-BHS-SKV

9 Petitioner,

ORDER ADOPTING REPORT
AND RECOMMENDATION

10 v.

11 JEFFEREY PERKINS,

12 Respondent.

13 THIS MATTER is before the Court on United States Magistrate Judge S. Kate
14 Vaughan's Report and Recommendation (R&R) recommending the Court deny and
15 dismiss pro se petitioner Thomas Boardman's second or successive 28 U.S.C. § 2254
16 habeas petition. Dkt. 11. Boardman objects to the R&R, arguing his petition is not
17 successive because his petitions do not assert the same claims against the same parties.
18 Dkt. 12 at 2. Boardman also moves for leave to appeal *in forma pauperis*. Dkt. 14. He
19 filed a memorandum and "disclosure statement" in support of his appeal. Dkt. 16.

20 Boardman was convicted in Kitsap County superior court of first degree rape of a
21 child in 2018. Dkt. 5. In 2019, he filed a § 2254 habeas petition challenging his judgment
22 and sentence; this Court dismissed his petition without prejudice. *Boardman v. Uttecht*,

1 No. 19-CV-5328-BHS (W.D. Wash.). In 2021, he filed another § 2254 petition, which the
2 Honorable John C. Coughenour denied as time-barred and dismissed with prejudice.
3 *Boardman v. Uttecht*, No. 21-CV-5428-JCC, Dkt. 20 (W.D. Wash. Jan. 3, 2022).

4 This is Boardman’s third § 2254 habeas petition challenging the same judgment
5 and sentence. Dkt. 5.

6 A district judge must determine de novo any part of a magistrate judge’s proposed
7 disposition to which a party has properly objected. It must modify or set aside any portion
8 of the order that is clearly erroneous or contrary to law. Fed. R. Civ. P. 72(a). The district
9 judge may accept, reject, or modify the recommended disposition; receive further
10 evidence; or return the matter to the magistrate judge with instructions. Fed. R. Civ. P.
11 72(b)(3).

12 A proper objection requires “specific written objections to the proposed findings
13 and recommendations” in the R&R. Fed. R. Civ. P. 72(b)(2). In providing for a de novo
14 determination, Congress “intended to permit whatever reliance a district judge, in the
15 exercise of sound judicial discretion, chose to place on a magistrate’s proposed findings
16 and recommendations.” *United States v. Raddatz*, 447 U.S. 667, 676 (1980) (internal
17 quotation marks omitted). Thus, the district court is required only to indicate that it
18 reviewed the record de novo and found no merit to the objections in order to summarily
19 adopt the R&R’s analysis. *United States v. Ramos*, 65 F.4th 427, 433 (9th Cir. 2023). The
20 district court is not obligated to “expressly address” every objection. *Id.* at 437.

21 A petitioner may not bring a second or successive habeas petition without
22 permission from the Court of Appeals. 28 U.S.C. § 2244(b)(3)(A); 28 U.S.C. § 2254 Rule

1 9. A second or successive petition is one with “claims contesting the same custody
2 imposed by the same judgment of a state court.” *Burton v. Stewart*, 549 U.S. 147, 153
3 (2007).

4 Boardman’s instant habeas petition challenges the same Kitsap County judgment
5 and sentence for first degree rape of a child that he challenged in his first and second
6 petitions. Dkt. 5 at 1. Because the Ninth Circuit has not authorized Boardman’s filing of a
7 successive § 2254 petition, the Court does not have jurisdiction to address his instant
8 petition. *See Burton*, 549 U.S. at 157 (because petitioner had not received authorization
9 from the Court of Appeals to file a second or successive petition, district court was
10 without jurisdiction to rule on it).

11 The case is frivolous on its face. Boardman’s motion for leave to proceed *in forma*
12 *pauperis* is **DENIED**. *See Tripathi v. First Nat’l Bank & Tr.*, 821 F.2d 1368, 1370 (9th
13 Cir. 1987) (“A district court may deny leave to proceed *in forma pauperis* at the outset if
14 it appears from the face of the proposed complaint that the action is frivolous or without
15 merit.”).

16 The R&R, Dkt 11, is **ADOPTED**. Boardman’s objections, Dkt. 12, are
17 **OVERRULED**. Boardman’s § 2254 petition, Dkt. 5, is **DENIED**. The case is
18 **DISMISSED** without prejudice. The Court declines to issue a certificate of appealability
19 because Boardman has not made a substantial showing of the denial of a constitutional
20 right. *See* 28 U.S.C. § 2253(c)(2).

21 The Clerk shall enter **JUDGMENT** and close this case.

22 **IT IS SO ORDERED.**

1 Dated this 20th day of December, 2024.

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4 BENJAMIN H. SETTLE
5 United States District Judge
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